

CHRONOLOGICAL LEGAL HISTORY CERTIFICATE OF NEED LAWS

As of October, 2005

- 1971 State and regional health planning authorized. Certificate of Need ("CoN") required to be issued by DSHS for construction, improvement, acquisition or equipping projects by hospitals or nursing homes costing more than \$100,000. **Chapter 198, Laws of 1971, 1st Ex. Sess.**
- 1979 Substantial revisions to CoN process to coordinate with federal National Health Planning and Resources Development Act. Amendments include: (i) establishment of state health coordinating council; (ii) a requirement to coordinate CoN program with federal law; (iii) specific delineation of new institutional health services subject to CoN review, including capital expenditures in excess of \$150,000, construction of any new health care facility, any increase in bed capacity, development of any new health services, and any expenditures in excess of \$150,000 in preparation for the development of one of the foregoing; (iv) establishment of specific criteria to be considered in the CoN review process; (v) establishment of a civil penalty for violation of CoN laws; and (vi) repeal of much of the 1971 law. **Chapter 161, Laws of 1979, 1st Ex. Sess.**
- 1980 CoN laws updated to reflect amendments to federal law by the Health Planning and Resources Development Amendments of 1979. Revisions include: (i) redefining capital expenditures to include donations and below— market transfers of health care facilities; (ii) establishment of \$150,000 threshold for CoN review for hospital and nursing home capital expenditures, to be adjusted in accordance with an index established by DSHS; (iii) subjecting all capital expenditures resulting in substantial service changes to CoN review; (iv) subjecting most acquisitions of major medical equipment to CoN review; (v) subjecting new institutional health services requiring annual operating expenditures of at least \$75,000 to CoN review; and (vi) exempting health maintenance organizations from most of the CoN review processes. **Chapter 139, Laws of 1980**
- 1982 Expenditure thresholds for CoN review raised to \$600,000 for capital expenditure, \$400,000 for major medical services, and \$250,000 for new institutional health services; other technical amendments. **Chapter 119, Laws of 1982**
- 1983 Expenditure thresholds for CoN review raised to \$1,000,000 (indexed to U. S. Commerce Department composite construction cost index) for capital expenditures and major medical equipment, and \$500,000 for new institutional health services. Exemptions from CoN review created for capital expenditures for (i) communications and parking facilities; (ii) mechanical, electrical and HVAC systems; (iii) energy conservation systems; (iv) repairs necessary to maintain state licensure; (v) construction and equipment acquisition not related to direct provision of health services; (vi) land acquisition; and (vii) debt refinancing.



Children's hospitals exempted from CoN process, but hospices and alcoholism hospital are included. Many other revisions to health planning and procedural requirements for issuance. **Chapter 235, Laws of 1983**

Removes Alcoholism hospitals from the definition of health care facility. **Chapter 41, Laws of 1983, 1st Ex. Sess**

- 1984 Sales, purchases and leases of existing hospitals subjected to CoN review. DSHS required to deny a CoN if the Hospital Commission ("Commission") does not recommend approval, unless the Secretary of DSHS provides the Commission with written reasons for overriding the Commission. **Chapter 288, Laws of 1984**
- 1988 A definition of Continuing Care Retirement Community (CCRC) is added. CCRCs are added to the definition of health care facility. It also excludes "type A" CCRCs from the definition of health care facility provided the CCRC meet certain criteria. **Chapter 20, Laws of 1988**
- 1989 Modifies statute provisions for an Adjudicative Appeal. Gives an applicant denied a CoN or whose CoN has been suspended or revoked the right to an administrative appeal under RCW 34.05, the Administrative Procedure Act. Removes reference to RCW 34.04 and the requirement that the hearing shall be held within 120 days of the request. Removes the provisions that the ALJ will review the initial decision and render a proposed decision to be considered by the Secretary or remand the back for further consideration. Removes statement that the Secretary's decision is subject to review by Superior Court. Removes the provisions that the department may establish procedures and criteria for reconsideration of decisions. **Chapter 175, Laws of 1989**
- Substantial revisions to CoN process coincident with sunset of Commission and creation of Department of Health. Many capital expenditures by hospitals exempted from CoN, including expenditures for acquisition of major medical equipment and most new services. Those hospital activities still subject to review include: (i) construction or establishment of new health care facilities; (ii) sale, purchase or lease of any existing hospital; (iii) increases or redistributions of beds; (iv) implementation of tertiary health services; and (v) increases in number of dialysis stations. Requirement of CoN for most nursing home capital expenditures retained. All CoN review and issuance powers transferred to Department of Health. **Chapter 9, Laws of 1989, 1st Ex. Sess.**
- 1991 CCRCs are removed from the definition of health care facility. Exempts the nursing home portion of a CCRC from CoN review provided the CCRC meets certain criteria. If all these criteria are not met, CoN review is required. **Chapter 158, Laws of 1991**

Establishes an Ethnic Minority Nursing Home Bed Pool. The pool is limited to no more than 250 beds designed to serve the special needs of ethnic minorities. The pool is to be made up of beds that become available on or after March 15, 1991, due to (i) loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement or (ii) Expiration of a Certificate of Need. Identifies specific criteria the nursing home must meet. Identifies specific ownership/operation criteria. Allows for the distribution of up to 100 beds from the bed pool in advance of the beds actually being in the pool. **Chapter 271, Laws of 1991**

Replaces the term skilled nursing facilities and intermediate care with nursing facility or nursing facilities. **Chapter 8, Laws of 1991, 1st Sp. Sess.**

1992 Allows a rural hospital to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. and reduce the number of licensed beds. If the rural primary care hospital subsequently wants to re-license itself as an acute hospital within 3 years, it may do so without CoN review. Allows a rural health care facility licensed under the provisions of RCW 70.41 to return to its rural acute care hospital licensure status within a period of 3 years without CoN review provided there has not been redistribution of beds between acute care and nursing home care and the facility has not been purchased or leased. Requires CoN review for a change in bed capacity of a rural health care facility. Requires CoN review for the redistribution of beds between acute care and nursing home care if the redistribution is effective for a period in excess of 6 months. Requires CoN review the provision of a tertiary health service offered in or through a rural health care facility. **Chapter 27, Laws of 1992**

1993 Adds a provision for nursing homes to voluntarily reduce the number of licensed nursing home beds (bank beds) to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic or to reduce to 1 or 2 the number of beds per room. ("alternate use"). Requires the nursing home to give the department notice of intent to bank the beds within 30 days of the license reduction. Allows the nursing home to convert the original facility or portion of the facility back to no more than the previously licensed number of beds without being subject to CoN (except under 70.38.105(4)(d) - Cost over the threshold) provided the facility has been in continuous operation and it has not been purchased or leased. Requires a 1 year notice of intent to convert beds back to nursing home beds if no construction is necessary and 2 years notice if construction is required. Requires the department to count these beds as available when evaluating need. Beds banked under this provision may remain in the bank for 4 years with the possibility of a 4 year extension. Removes outdated reference to health plans. Adds the requirements that the department consider available nursing home beds in a planning area and the availability of other services in the community to be served by a nursing home

when evaluating the need and cost containment criteria. Adds provisions for deeming the need for nursing home beds to be met, if the application is to replace existing beds and the applicant is an existing licensee who proposes to replace them in the same planing area with the same or fewer number of beds. All other review criteria must be met as if the applicant were requesting new nursing home beds. Allows the beds of facility that closes entirely to be banked for up to 8 years. ("full facility closure"). Requires the department to consider them as existing beds for replacement purposes. Requires the nursing home to give the department notice of its intent to bank beds under this provision no later than 30 days after effective date of the facility's closure. **Chapter 508, Laws of 1993.**

1995 Modifications made to the "alternate use" bed banking provisions. Adds the ability of the a nursing home to bank beds for the purpose of "to otherwise enhance the quality of life for residents." Removes the requirement of CoN if converting the banked beds back has construction costs in excess of the review threshold. Requires written approval from the building owner if the owner has a secured interest in the nursing home bed rights. Adds provisions giving the right to any health care facility or HMO that meet certain criteria the option to present oral or written testimony and argument in an adjudicative proceeding. If the department subsequently decides to settle an appeal, the must inform these health care facilities and afford them an opportunity to comment, in advance, on the proposed settlement. Modifies the nursing home replacement provisions. Replacement of nursing home beds in the same planning area by an existing licensee who has operated the beds for at least 1 year is exempt from CoN review. The licensee must give notice of its intent to replace and is required to provide the department with certain information as required by rule. The replacement by anyone else requires CoN review. Modifies "full facility closure" bed banking provisions. Allows the licensee, or any other party who has secured an interest in the beds the ability to bank the beds for up to 8 years. Requires CoN review for any proposal to unbank the beds. However, the need is deemed met it the applicant was the licensee who had operated the facility for at 1 year immediately preceding the bed banking provided the beds are to be replaced in the same planning area. Allows the building owner (provided they have a secured interest in the beds and under very limited circumstances) the ability to complete a replacement project should the licensee be unable to do so. **Chapter 18, Laws of 1995, 1st Sp. Sess.**

1996 Modifies the exemption provisions from CoN review for repairs to or the corrections of, deficiencies in existing physical plants. Repairs, remodeling or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from CoN review. Allows the renovation of dining areas, kitchen area, laundry and therapy areas without CoN review when the costs exceed the review threshold provided the licensee has operated the beds for at least 1 year prior to the project. **Chapter 50, Laws of 1996**

Changes the term osteopathy to osteopathic medicine and surgery. **Chapter 178, Laws of 1996**

- 1997 Modifies the conversion notice timelines for “alternate use” banked beds. The time is changed to 90 days when no construction is involved and 1 year when construction is involved. The term construction is defined as those projects with costs exceeding the CoN review threshold. Clarifies that a nursing home prior to converting the beds back must demonstrate the necessary criteria to be eligible to convert the beds. Adds a CoN review exemption for any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations. This exemption is also extended to any health facility or institution operated for the exclusive care of members of a convent or rectory, monastery, or other institution operated for the care of members of the clergy. **Chapter 210, Laws of 1997**
- 1998 Allows a one time CoN review exemption for bed additions to a residential hospice care center that received a CoN non-reviewability determination prior to June 1994. Defines “residential hospice care center” to mean any building, facility, place, or equivalent that opened in December 1996 and is organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease that is expected to lead to death. **Chapter 322, Laws of 1998**
- 1999 The nursing home bed to population ratio is established in RCW. The ratio is set at 40 beds per thousand for residents 65+. Prohibits the program from accepting nursing home applications wanting to add bed capacity when the project is to be located in an overbedded planning area. The ratio section of the statute expires June 30, 2004. For those projects undergoing review, additional factors to be considered are outlined. **Chapter 376, Laws of 1999**
- 2000 DOH directed to revise the methodology applied to Certificate of Need applications for open heart surgery, therapeutic cardiac catheterizations and percutaneous transluminal coronary angioplasty. Provided direction on who should participate in the rule development. Required a report back to the health committees of the legislature on the development of the rules and provide the committees with a copy of the adopted rules. This section of statute expires December 31, 2000. **Chapter 59, Laws of 2000**
- 2000 Changes the definition of health care facility to include hospice care centers. Provides a window for the grandfathering of those facilities that were licensed either as a hospital (RCW 70.41) or a nursing home (RCW 18.51) that was providing the functional

equivalent of a hospice care center. The act takes effect January 1, 2002. **Chapter 175, Laws of 2000**

- 2004 Provides an exemption for Critical Access Hospitals (CAH) from CoN review for the increase in licensed bed capacity or the redistribution of beds between acute care and nursing home care. If there is a nursing home licensed under RCW 18.51 within 27 miles of the CAH, the CAH is subject to CON review except for (i) CAHs that had designated beds to provide nursing home care, in excess of 5 swing beds, prior to December 31, 2003; or (ii) up to 5 swing beds. The CAH beds not subject to CoN are not counted as either nursing home beds or acute care beds. Provides reversion rights for the CAH to convert back to the type and number of licensed hospital beds it had when it requested critical access hospital designation. **Chapter 261, Laws of 2004**

